

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ERIKA VARGAS,

Defendant.

4:20-CR-3125

ORDER

This matter is before the Court on the Magistrate Judge's Findings and Recommendation ([filing 72](#)) recommending that the Court deny the defendant's remaining [28 U.S.C. § 2255](#) claim. The defendant has not objected to the Magistrate Judge's findings and recommendation. *See* [NECrimR 59.2\(a\)](#); [NECivR 72.2\(a\)](#).

Title [28 U.S.C. § 636\(b\)\(1\)](#) provides for de novo review of a Magistrate Judge's findings or recommendations only when a party objects to them. *Peretz v. United States*, 501 U.S. 923 (1991). Failure to object to a finding of fact in a Magistrate Judge's recommendation may be construed as a waiver of the right to object from the district court's order adopting the recommendation of the finding of fact. [NECrimR 59.2\(e\)](#); [NECivR 72.2\(f\)](#). The claimant was expressly advised that "failing to file an objection to this recommendation as provided in the local rules of this court may be held to be a waiver of any right to appeal the court's adoption of the recommendation." [Filing 72 at 2](#). And the failure to file an objection eliminates not only the need for de novo review, but any review by the Court. *Thomas v. Arn*, 474 U.S. 140 (1985); *Leonard v. Dorsey & Whitney LLP*, 553 F.3d 609 (8th Cir. 2009); *see also United States v. Meyer*, 439 F.3d 855, 858-59 (8th Cir. 2006).

Accordingly, the Court will dismiss the defendant's remaining claim with prejudice, fully disposing of her § 2255 motion. For the reasons stated by the Magistrate Judge and in the Court's previous memorandum and order ([filing 62](#)), the defendant's allegations either entitle her to no relief, or are contradicted by the record.

A movant cannot appeal an adverse ruling on her § 2255 motion unless she is granted a certificate of appealability. [28 U.S.C. § 2253\(c\)\(1\)](#); [Fed. R. App. P. 22\(b\)\(1\)](#). A certificate of appealability cannot be granted unless the movant "has made a substantial showing of the denial of a constitutional right." [§ 2253\(c\)\(2\)](#). To make such a showing, the movant must demonstrate that reasonable jurists would find the Court's assessment of the constitutional claims debatable or wrong. [Tennard v. Dretke](#), 542 U.S. 274, 282 (2004); *see also* [Gonzalez v. Thaler](#), 565 U.S. 134, 140-41 (2012).

In this case, the defendant has failed to make a substantial showing of the denial of a constitutional right. The Court is not persuaded that the issues raised are debatable among reasonable jurists, that a Court could resolve the issues differently, or that the issues deserve further proceedings. Accordingly, the Court will not issue a certificate of appealability.

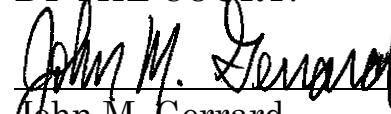
IT IS ORDERED:

1. The Magistrate Judge's Findings and Recommendation ([filing 72](#)) are adopted.
2. The defendant's first claim is dismissed with prejudice.
3. The defendant's motion to vacate under [28 U.S.C. § 2255](#) ([filing 61](#)) is denied.

4. The Court will not issue a certificate of appealability in this matter.
5. A separate judgment will be entered.
6. The Clerk is directed to mail a copy of this Memorandum and Order to the defendant at her last known address.

Dated this 6th day of July, 2023.

BY THE COURT:



John M. Gerrard
Senior United States District Judge